

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of:

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)	
Request for Review of the)	Administrator Correspondence
Decision of the)	June 22, 2018
Universal Service Administrator by)	
)	
Hondo Valley School District)	
Hondo, NM)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

TO: Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, D.C. 20554

Requestor: Hondo Valley School District
Billed Entity Number: 143369
FCC Registration Number: 0014513543
FRN: 1699074272
FCC Form 471: 161035170

In accordance with Sections 54.719 through 54.721 of the Commission's Rules, Hondo Valley School District (Hondo or District) appeals an Administrator's Decision dated June 22, 2018 regarding a recent appeal denial issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator).

On January 23, 2018, Hondo received a Commitment Adjustment Letter (COMAD) intending to seek recovery of improperly disbursed funds from the applicant.¹ The letter explained that there were excess fiber strands not constructed or lit within the same funding year as requested. Specifically, the recovery stated the following:

"During a review, it was determined that the funding commitment for this request must be reduced by \$1958.33. USAC will seek recovery of any improperly disbursed funds from the applicant. E-rate funding is only available for eligible schools, libraries, and consortia made up of eligible schools and libraries, to purchase eligible services that will be used for an eligible educational purpose. E-rate supported services may not be resold. The Second E-rate Modernization Order describes a self-provisioned network as one in which an eligible school or library owns a full network or fiber run, including all the fiber strands and conduit. Special construction charges for self-provisioned networks are only eligible for support if the networks are constructed and used within the same funding year as the funding request (i.e., by June 30). Funding was provided for the following ineligible items: 47 Unlit Fiber Strands. An applicant may install Excess Fiber Strands if: (i) the strands are installed exclusively for the applicants future bandwidth needs; and (ii) the strands will remain dormant until lit for the applicants exclusive future use. Any Excess Fiber Strands that will not be lit within the same funding year as the funding request are ineligible in that funding year and must be allocated out of the special construction FRN. The pre-discount cost associated with these items is \$2,175.92, for a total ineligible amount of \$2,175.92. At the applicants 90 percent discount rate, this resulted in an improper commitment of \$,1958.33."

Hondo filed appeal #91912 with USAC on March 23, 2018 to appeal the decision to seek recovery of funds from the applicant.²

"Hondo Valley School District appeals the decision to seek recovery from the applicant for special construction to provide lit fiber service to the school district. Hondo Valley School District conducted a procurement which produced only lit fiber bids. Hondo Valley School District selected the most cost effective response to the procurement which was a lit service from PVT. PVT offered a lit service with installation charges. At no time did Hondo discuss with PVT the number of fiber strands to be installed as all fiber is owned by the service provider. USAC should not seek recovery from the applicant as the applicant does not own the fiber and was not responsible for installation of extra strands."

Hondo received a denial to the appeal #91912 on June 22, 2018 stating that the District "did not demonstrate that USAC's decision was incorrect. Consequently, your appeal is denied."³

As per FCC rules, Hondo submitted a Form 470 and RFP to request competitive bids for Internet Access services for the school district. During the competitive bidding process, Hondo sought bids that offered

¹ Attachment A- COMAD Letter, January 23, 2018.

² Attachment B- Appeal 91912, March 23, 2018.

³ Attachment C- RFCDL on Appeal 91912, June 22, 2018.

a turnkey solution. As a result of the competitive bid, only traditional, lit solutions were proposed, and Hondo selected the most cost-effective bid.

Hondo certified Funding Year (FY) 2016 FCC Form 471 161035170 for FRN 1699074272 on April 28, 2016.⁴ FRN 1699074272 included a request for "Lit Fiber Service" with the lease of fiber strands owned by Service Provider Identification Number (SPIN) 143015372 PVT Networks, Inc.(PVT). The application was reviewed by USAC and funded. Construction was completed and the lit service began. Several months later, Hondo received very complicated questions for which only a service provider could provide answers. Hondo asked the PVT to answer the questions that USAC asked, and PVT responded to USAC. Several months later, Hondo received a Commitment Adjustment Letter that stated erroneously that the service was self-provisioned and that Hondo must repay USAC for extra fiber strands.

Hondo is a very rural school that has been seeking affordable fiber-based Internet Access for several years. Until the E-rate Modernization Order established a matching funds program to support special construction costs supplemented by the State of New Mexico, Hondo was struggling to meet the broadband needs of our students. We are still seeking more affordable broadband. The service that was purchased was the most affordable and cost effective for the E-rate program and Hondo. Before the establishment of the option to procure E-rate discounted self-provisioned fiber, no applicant was required to answer questions regarding the number of strands of fiber that were placed in the ground, because it was understood that the applicant was not privy to such proprietary information. We believe that we were unfairly targeted because we included the self-provisioned option in our procurement to drive competition.

We do not believe that recovery should be sought from us, as we purchased a turn-key solution for which we do not have the legal authority to know specific details about the number of strands that were placed in the ground. Our burden is to competitively bid a solution and to choose the most cost-effective solution. We have fulfilled our obligations. If the FCC disagrees with us, we request a waiver from this rule violation. In the Fifth Report and Order (FCC 04-190) the FCC stated that, "...recovery may not be appropriate for violation of all rules regardless of the reason for their codification."⁵

We believe that we acted in good faith and that the Universal Service Fund exists to help poor rural districts like ours. Thank you and we greatly appreciate your consideration of this appeal.

Sincerely,

Marvin Martin
Hondo Valley School District



⁴ Attachment D- certified FCC Form 471 161035170.

⁵ Fifth Report and Order (FCC 04-190) Para. 19